

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 3863 of 2006

Date of Decision: 17.11.2006

Karnail Kaur and others

...Appellants

Versus

Kartar Singh

....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Parminder Singh, Advocate, for the appellants.

JUDGMENT

The challenge in the present second appeal is to the judgment and decree passed by the learned first Appellate Court, whereby a decree for recovery in the sum of Rs.50,000/- along with the interest @ 12% p.a. from the date of the execution of the pronote till the date of decree and future interest @ 6% p.a. till the date of realisation, was granted.

The learned trial Court dismissed the suit, but the learned first Appellate Court, found that the scribe PW1 Shivji Lal and attesting witness Jaila Singh PW2 have admitted their signatures on the receipt. It was held that since the execution of the pronote and the receipt is admitted, the statement that no consideration has passed in their presence is not material to rebut the presumption of consideration in terms of the provisions of the Negotiable Instruments Act, 1881 (for short 'the Act')

Learned counsel for the appellant has vehemently argued that the presumption under Section 118 of the Act, is rebuttable and such presumption stands rebutted on the basis of testimony of attesting witness as

well as the scribe as both the the witnesses have deposed that no consideration has passed in their presence.

The scribed has proved the signatures on the receipt as that of Malkiat Singh. The attesting witness has admitted his signatures on receipt but deposed that Malkiat Singh has not signed in his presence. There is no explanation as to why Malkiat Singh would execute a pronote in favour of the plaintiff or as to why the plaintiff has propounded pronote against Malkiat Singh. Mere denial of lack of passing of consideration in the presence of the witness is not sufficient to rebut the presumption in respect of a presumption statutorily raised in terms of Section 118 of the Act. The pronote is not a document which is required to be attested. It is not necessary that the consideration is to pass at the time of execution of the pronote only. The statement of plaintiff as PW3 is clear and categorical that a sum of Rs.50,000/- was given to Malkiat Singh and the same was accepted by him. Since the pronote is proved to bear signatures of Malkiat Singh, the onus was heavy on the defendant to rebut the statutory presumption. The statements of the scribe and the attesting witness that no consideration has passed in their presence are not sufficient to rebut the presumption.

I do not find that the findings recorded by the learned first Appellate Court, suffer from any patent illegality or irregularity, which may given rise to any substantial question of law in the present appeal.

Hence, the present appeal is dismissed.

17-11-2006
ds

(HEMANT GUPTA)
JUDGE